

No. 787

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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THE UNITED STATES OF  
AMERICA,  
*Plaintiff in Error,*  
vs.  
E. F. WILLCOX,  
*Defendant in Error.*

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TRANSCRIPT OF RECORD.

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Upon Writ of Error to the United States Circuit  
Court for the Southern District of California.

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## Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you between the United States of America, plaintiffs, and E. F. Willcox, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, the United States of America, as by their complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the twenty-fourth day of December, next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals, may cause further to be done therein to correct

that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 26th day of November, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States, the one hundred and twenty-sixth.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

By Chas. N. Williams,

Deputy Clerk.

The above writ of error is hereby allowed.

OLIN WELLBORN,

Judge.

I hereby certify that a copy of the within writ of error was on the 26th day of November, 1901, lodged in the clerk's office of the said United States Circuit Court for the Southern District of California, for the said defendants in error.

WM. M. VAN DYKE,

Clerk United States Circuit Court, Southern District of California.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: United States Circuit Court of Appeals, for the Ninth Circuit. The United States of America, Plaintiffs in Error, vs. E. F. Willcox, Defendant in Error. Writ of Error. Filed November 26, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

**Citation.**

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to E. F. Willcox, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 24th day of December, A. D. 1901, pursuant to a writ of error on file in the clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, in that certain action number 5, Northern Division, wherein the United States of America, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and rendered against the said United States of America, in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable OLIN WELLBORN, United States District Judge, for the Southern District of California, and one of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 26th day of November, A. D. 1901, and of the Independence of the United States, the one hundred and twenty-sixth.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

United States of America, }  
 Northern District of Cal. }<sup>ss.</sup>

I hereby certify and return that I served the annexed writ of citation on the therein-named E. F. Willcox, by handing to and leaving a true and correct copy thereof with said E. F. Willcox, personally, at San Francisco, in said District, on the 4th day of December, A. D. 1901.

JOHN H. SHINE,  
 United States Marshal.

By R. De Lancie,  
 Office Deputy.

Service of the within citation and receipt of a copy thereof admitted this — day of November, A. D. 1901.

\_\_\_\_\_,  
 Solicitor for Defendant in Error and Defendant in the  
 Court Below.

[Endorsed]: Original. Marshal's Docket No. 2,169. In the United States Circuit Court of Appeals, for the Ninth Circuit. The United States of America. Plaintiffs in Error, vs. E. F. Willcox, Defendant in Error. Citation. Filed December 6, 1901. Wm. M. Van Dyke, Clerk.

The answer of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Circuit

Court, to the United States Circuit Court of Appeals, for the Ninth Circuit, in a certain schedule to this writ annexed, as within we are commanded.

By the Court.

[Seal]

WM. M. VAN DYKE,  
Clerk.

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*In the Circuit Court of the United States, Southern District of California, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. F. WILLCOX,

Defendant.

**Complaint.**

The United States of America, by Frank P. Flint, United States Attorney for the Southern District of California, files this day its complaint against E. F. Willcox, the above-named defendant, and for cause of action alleges:

That said defendant, heretofore, to wit, on the 14th day of December in the year of our Lord one thousand eight hundred and ninety-six, was a first lieutenant in the Sixth Regiment of Cavalry of the said United States.

That said defendant, heretofore, to wit, on the — day of —, in the year of our Lord one thousand eight hundred and —, as such lieutenant, did ren-

der his account to the United States in the sum of two hundred (\$200) dollars, as and for the value of a certain horse then and there claimed by said defendant to have been lost in the military service of the United States, at Fort Lewis, in the State of Colorado, on or about the 6th day of April, A. D. 1889. Which said account was duly presented to the War Department; and claim numbered 108,188. That afterward, to wit, on the 7th day of December, 1896, said account was duly settled by the Auditor of the War Department, and a certificate of settlement numbered 1,737, duly issued by the said Auditor of the War Department, for the said sum of \$200.00; which sum of \$200.00 was paid to said defendant on or about the 14th day of December, 1896.

That on the 28th day of May, 1897, the Comptroller of the Treasury directed a revision of said claim number 108,188, upon which said aforementioned certificate of settlement number 1,737 was based, and by reason of which said defendant received from plaintiff said sum of \$200.00, and disallowed said claim of defendant, for the reason that the loss of the said horse on which the said claim of defendant was based, was not without fault on the part of said defendant; and the said defendant by his negligence contributed to the loss of said horse, and thereby was not entitled to recover for said loss, under the act of March 3, 1885 (23 Stat. at Large, p. 350).

That thereafter, to wit, on the 24th day of May, A. D. 1898, acting on the direction of the Comptroller of the Treasury, the Auditor of the War Department, at

Washington, D. C., re-stated said claim of defendant and issued a new certificate number 4,867, raising a charge of two hundred (\$200.00) dollars against said defendant; by reason of which said defendant became then and there indebted to plaintiff in the sum of \$200.00.

That the said defendant, though often demanded, has neglected and refused and still neglects and refuses, to pay said sum of \$200.00, or any part thereof, and the whole of said sum of \$200.00 remains due and unpaid, together with interest thereon at the rate of six per cent per annum from said 24th day of May, 1898.

Wherefore, plaintiff brings suit and demands judgment against said defendant for said sum of \$200.00, with interest thereon at the rate of six per cent per annum from the 24th day of May, 1898, until entry of judgment; together with costs of suit.

FRANK P. FLINT,

United States Attorney.

[Endorsed]: Form 354. No. 5. U. S. Circuit Court, Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Complaint. Filed Aug. 8, 1900. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

## UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit, Southern  
District of California, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. F. WILLCOX,

Defendant.)

Action brought in the said Circuit Court, and the complaint filed in the office of the Clerk of said Circuit Court, in the City of Los Angeles, County of Los Angeles.

**Summons.**

The President of the United States of America, Greeting, to E. F. Willcox.

You are hereby required to appear in an action brought against you by the above-named plaintiff in the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city of Los Angeles county of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you.

The said action is brought to recover judgment against said defendant for the sum of \$200.00 with interest thereon from the 24th day of May, 1898, until entry of judgment, together with costs of suit because as plaintiffs allege defendant as First Lieutenant in the Sixth Regiment of Cavalry, of the United States did render his account to the United States, in the sum of \$200.00, as and for the value of a certain horse then and there claimed by said defendant to have been lost in the military service of the United States, at Fort Lewis, in the State of Colorado, on or about the 6th day of April, A. D. 1889, which said account was duly presented to the War Department, that afterward said account was duly settled, and a certificate of settlement issued by the Auditor of the War Department, and said sum of \$200.00 was paid to defendant on or about the 14th day of December 1896, that on the 28th day of May, 1897, the Comptroller of the Treasury directed a revision of said claim by reason of which said defendant received from plaintiffs said sum of \$200.00, and disallowed said claim of defendant, for the reason that the loss of said horse on which said claim of defendant was based, was not without fault on the part of said defendant; and the said defendant by his negligence contributed to the loss of said horse, and thereby was not entitled to recover for said loss, that thereafter, to wit, on the 24th day of May, A. D. 1898, the Auditor of the War Department re-stated said claim of defendant, and issued a new certificate raising a charge of \$200.00 against said defendant; by reason of which said defendant became then and there

indebted to plaintiffs in the sum of \$200.00, that said defendant though often demanded, has neglected and refused, and still neglects and refuses to pay said sum of \$200.00, or any part thereof, and the whole of said sum remains due and unpaid together with interest thereon at the rate of six per cent per annum from said 24th day of May, 1898, all of which more fully appears from the complaint on file in this cause, to which you are hereby expressly referred, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded in the complaint.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 10th day of August, in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fifth.

[Seal]

WM. M. VAN DYKE,  
Clerk.

By Chas. N. Williams,  
Deputy Clerk.

United States Marshal's Office, }  
Southern District of California. }

I hereby certify, that I received the within writ on the 27th day of August, 1900, and personally served the same on the 1st day of September, 1900, by delivering to and leaving with E. F. Willcox, said defendant named therein, personally, at the county of Mariposa in said District a certified copy thereof together with a copy of



I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

H. Z. AUSTIN,

Counsel for Defendant. (Address.) Fresno, Cal.

[Endorsed]: No. 5. In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Northern Division. The United States vs. E. F. Willcox. Demurrer. Filed October 9, 1900. Wm. M. Van Dyke, Clerk.

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At a stated term, to wit, the May Term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Northern Division, held at the courtroom in the city of Fresno, on Tuesday, the fourteenth day of May, in the year of our Lord one thousand nine hundred and one. Present: The Honorable OLIN WELLBORN, District Judge.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

No. 5.

E. F. WILLCOX,

Defendant.

### Order Sustaining Demurrer and Dismissing Action.

This cause having heretofore been submitted to the Court for its consideration and decision on the demurrer of the defendant to plaintiff's complaint, and the Court having duly considered the same, and being fully advised

in the premises, it is now, on this 14th day of May, 1901, being a day in the May Term, A. D. 1901, of said Circuit Court of the United States for the Southern District of California, Northern Division, ordered that said demurrer be, and the same hereby is, sustained, and that said action be dismissed.

[Endorsed]: No. 5. U. S. Circuit Court, Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Copy of Order Sustaining Demurrer and Dismissing Action. Filed May 31, 1901. Wm. M. Van Dyke, Clerk.

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UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,  
Southern District of California, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

No. 5.

E. F. WILLCOX,

Defendant.

**Judgment.**

This cause having heretofore been submitted to the Court for its consideration and decision upon the demurrer of defendant to the complaint of plaintiff, and the Court having duly considered the same and having on the 14th day of May, 1901, being a day in the May Term, A. D. 1901, of said Circuit Court of the United

States for the Southern District of California, Northern Division, ordered that said demurrer be sustained and that said action be dismissed.

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that the United States of America, the plaintiffs herein, take nothing by this action as against the said defendant and that the said defendant E. F. Willcox go hereof without day.

Judgment entered May 31st, 1901.

WM. M. VAN DYKE,  
Clerk.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original judgment made and entered by said Court May 31st, 1901, in the cause entitled United States of America, Plaintiffs, vs. E. F. Willcox, Defendant, No. 5, and remaining of record therein.

Attest my hand and the seal of said Circuit Court this 31st day of May, A. D. 1901.

[Seal]

WM. M. VAN DYKE,  
Clerk.

[Endorsed]: No. 5. U. S. Circuit Court, Ninth Circuit, Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Certified Copy Judgment. Filed May 31, 1901. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Southern District of California, Northern Division.*

UNITED STATES OF AMERICA,	}	No. 5.
Plaintiffs,		
vs.	}	
E. F. WILLCOX,		
	Defendant.	

**Certificate to Judgment-Roll.**

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Southern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court this 31st day of May, A. D. 1901.

[Seal]

WM. M. VAN DYKE,  
Clerk.

[Endorsed]: No. 5. In the Circuit Court of the United States. Ninth Judicial Circuit, for the Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Judgment-Roll. Filed May 31st, 1901. Wm. M. Van Dyke, Clerk. Recorded Judgment Register Book No. 1, page 2.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. F. WILLCOX,

Defendant.

**Petition for Writ of Error.**

The above-named plaintiff, the United States of America, conceiving itself aggrieved by the judgment entered on the thirty-first day of May, 1901, in the above-entitled cause, hereby prays the Court for a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and that a transcript of the records and proceedings and papers on which said judgment was made and entered, duly authenticated, may be sent to the said Circuit Court of Appeals of the United States for the Ninth Circuit.

Los Angeles, Cal., November 25th, 1901.

L. H. VALENTINE,

United States Attorney, Southern District of California.

[Endorsed]: No. 5. U. S. Circuit Court, Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Petition for Writ of Error. Filed November 25, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the United States Circuit Court of Appeals, for the Ninth Circuit.*

UNITED STATES OF AMERICA,  
Plaintiff in Error,  
vs.  
E. F. WILLCOX,  
Defendant in Error.

**Assignment of Errors.**

Now comes the above-named plaintiff in error, the United States of America, by L. H. Valentine, United States Attorney for the Southern District of California, its counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

The Circuit Court of the United States, Ninth Circuit, Southern District of California, Northern Division, erred in sustaining the defendant's demurrer to the plaintiff's complaint.

Wherefore, the said United States of America prays that the judgment of the said Circuit Court of the United States, Southern District of California, Northern Division, be in all things reversed.

L. H. VALENTINE,  
United States Attorney for the Southern District of California.

[Endorsed]: No. 5. U. S. Circuit Court of Southern District of California, Northern Division. United States of America vs. E. F. Willcox. Assignment of Errors. Filed November 25, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

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At a stated term, to wit, the July Term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Monday, the twenty-fifth day of November, in the year of our Lord, one thousand nine hundred and one. Present: The Honorable OLIN WELLBORN, District Judge.

UNITED STATES OF AMERICA,	} No. 5,
Plaintiffs,	
vs.	
E. F. WILLCOX,	} Northern Division.
Defendant.	

### Order Allowing Writ of Error.

On reading and filing the petition of plaintiffs, the United States of America, praying for the allowance of a writ of error in the above-entitled cause, returnable before the United States Circuit Court of Appeals for the Ninth Circuit, and on motion of L. H. Valentine, Esq., United States Attorney, of counsel for said plaintiffs, it is ordered that said petition be, and the same hereby is al-



I do further certify that the cost of the foregoing record is \$7.60.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 11th day of December, in the year of our Lord, one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

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[Endorsed]: No. 787. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. E. F. Willcox, Defendant in Error. Transcript of Record Upon Writ of Error to the United States Circuit Court for the Southern District of California.

Filed December 21, 1901.

F. D. MCNCKTON,

Clerk.